STATE OF MICHIGAN
Department of Human Services

Michigan Domestic Violence Prevention & Treatment Board
235 S. Grand Avenue, Suite 506
Lansing, MI 48933

www.michigan.gov/domesticviolence

Phone: (517) 335-6388
Fax:: (517) 241-8903

Memo

To: **Senate Judiciary Committee members**
From: **Mary Lovik, J.D., on behalf of members of the Michigan Domestic Violence Prevention & Treatment Board**
Date: **Feb. 14, 2012**
RE: **SB 694 (expand court's jurisdiction in child protection cases to situations where the unfitness of a home is anticipated)**

The members of the Michigan Domestic Violence Prevention and Treatment Board oppose SB 694. MCL 712A.2(b)(2) currently gives the family division of circuit court jurisdiction over proceedings involving children under age 18 "whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian ***is*** an unfit place for [them] to live in." [Emphasis added.] The amendments to this statute proposed in SB 694 would expand the court's jurisdiction to additionally include situations where the child's home "***will be***" an unfit place to live.

The provision for anticipatory "unfitness" introduced by SB 694 is not consistent with current Children's Protective Services policies regarding domestic violence, which provide that investigations of complaints alleging domestic violence should focus on *past or current* (not anticipated future) events. Non-offending victims of domestic violence will not be held responsible for failure to protect children from exposure to a perpetrator's behavior unless a child is at *imminent* risk of harm.[1]

CPS policies recognize that when children are exposed to domestic violence, the most effective response is to hold the perpetrator accountable for the abuse, and to support the victim's efforts to keep children safe. The policies also recognize that a strong relationship with a protective parent is a key factor in children's resilience to exposure to domestic violence. Sometimes the safest course of action for victims is to leave the abuser. Other times, it is safer for victims to stay. Staying may be safer than leaving because domestic violence perpetrators seek to control their partners, and often escalate the violence and other abusive tactics when a partner takes steps to leave the relationship. In either case, SB 694 creates a "Catch-22" situation for survivors if authorities determine that either going or staying will render a survivor's home anticipatorily unfit due to the risk from the abuser's behavior. To illustrate, in a case where a survivor's husband has been

---

[1] PSM 712-6, p. 13 (6/1/2010) states:

> "A complaint in which the only allegation is DV is not a sufficient basis for assigning the complaint for field investigation. In order to be assigned for investigation, the complaint must also include information indicating the DV has resulted in harm or threatened harm to the child. CPS must conduct a minimum of a preliminary investigation on complaints alleging DV. The preliminary investigation must include contact with law enforcement to determine whether a child has been injured, is at risk of injury, or has been threatened with harm as a result of past or current DV in the home."

PSM 713-8, p. 15 (6/1/2010) states:

> "A non-offending caretaker will not be held responsible for neglect, based on failure to protect, if the child is not at imminent risk."

convicted of misdemeanor domestic assault and is about to be placed on probation for this offense or released from jail:

- The serial nature of battering and the husband's anticipated return to the home may prompt initiation of a petition under MCL 712A.2(b) if it is perceived that the husband's crime renders the home "unfit" under the bill's definition.
- The threat of anticipated "separation violence" against a survivor who leaves the marital home may prompt initiation of a petition if it is perceived that retaliatory violence would render her new residence "unfit."

Survivors may have limited financial, time, or emotional resources to cope with a child welfare action against them, particularly if they are also involved in a concurrent criminal or divorce case. Thus, the possibility of more aggressive court involvement under the bill may deter survivors from reaching out for the help they need from professionals such as law enforcement officials, who are mandated reporters of child abuse or neglect. Abusers who are aware of the broader reach of the law under SB 694 may also use the possibility of court intervention as a threat, to discourage survivors from reaching out for help.

The MDVPTB has further concerns that the definition of "criminality" in SB 694 is unconstitutionally vague. Statutory language may be challenged for vagueness if it does not provide fair notice of the conduct proscribed. Another grounds for a vagueness challenge arises when a statute is so indefinite that it gives the court unstructured and unlimited discretion to determine whether the law has been violated.[2]

SB 694 defines "criminality" to mean a violation of law "that by its nature or effect renders the home unfit." The MDPVTB does not believe that this definition provides fair notice of what violations of law render a home unfit,[3] because it offers no standards for determining when a violation impacts the fitness or unfitness of a home. The definition also provides no guidance for determining at what point the anticipation of future "unfitness" will justify court intervention.[4] Without such standards, courts have unlimited, unstructured discretion in taking jurisdiction under MCL 712A.2(b)(2), opening the door to arbitrary or discriminatory enforcement.[5]

---

[2] People v. Hubbard (After Remand), 217 Mich.App. 459, 484, 552 N.W.2d 493 (1996).

[3] To give fair notice, a statute must give a person of ordinary intelligence a reasonable opportunity to know what is prohibited or required. People v. Noble, 238 Mich.App. 647, 651-52 (1999).

[4] See Kenefick v. City of Battle Creek, 284 Mich.App. 653, 657 (2009).

[5] Note that children of color are already disproportionately represented in Michigan's child welfare system. See Report from the Michigan Advisory Committee on the Overrepresentation of Children of Color in Child Welfare (Department of Human Services, 2006) http://www.michigan.gov/documents/DHS-Child-Equity-Report_153952_7.pdf .